THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.3394 of 2005

Dated: 20-07-2007

Between:

G.Ganapathi Rao.

..... PETITIONER

AND

The District Collector, Visakhapatnam, and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.3394 of 2005

ORDER:

The petitioner seeks a writ of Mandamus declaring the action of the respondents in trying to evict him from the house bearing No.1-31 in the land admeasuring Ac.0.72 in survey No.113 situated at China Mushidivada Grampanchayat, Pendurthi Mandal, Visakhapatnam District, as illegal and arbitrary.

The brief fact of the matter is that the petitioner purchased subject land under a registered sale deed dated 23.07.1980, constructed a house therein in 1985 and paying the taxes to the Gram Panchayat. Third respondent allegedly visited the house of the petitioner on 12.01.2005 and removed the barbed wire fence and poles of the compound wall. It is alleged that third respondent did not initiate any action either under the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (the Act, for brevity) or any other law.

This Court, while admitting the writ petition on 28.02.2005, in W.P.M.P.No.4588 of 2005 ordered *status quo*. The respondents now moved this Court by filing W.V.M.P.No.603 of 2007 for vacating the interim order. The writ petition itself is heard finally as a short question is involved.

In the counter-affidavit is filed by third respondent, the allegation that the revenue officials removed the barbed wire fencing and poles is denied. It is stated that the petitioner purchased the assigned land in contravention of the Act and that necessary action is being taken to vacate him in accordance with law (see paragraphs 3 and 6 of the counter-affidavit). In paragraph 4 of the counter-affidavit, third respondent states as under.

> It is respectfully submitted that when the writ petitioner and others are trying to occupy the vacant land in the land covered by S.No.113, the Mandal Revenue Officer and his staff have taken action to stop the un-authorized encroachment. It is not correct to say that the petitioner was dispossessed and the land is being taken possession without following the process of law. No private land (or) patta land of the writ petitioner was taken possession and the contention of the writ petitioner is not correct. The Mandal Revenue Officer is only taking action to protect the Government land. The writ petitioner having purchased the assigned valuable Govt. land has designed a false claim to grab-away the valuable Government land and approached the Hon'ble High Court on misrepresentation of facts.

The learned counsel for the petitioner submits that if there is an

allegation that the petitioner has purchased the assigned land, third respondent is required to issue notice under Rule 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Rules, 2007, and then pass an order under Section 4 of the Act before evicting him. Without doing the same, third respondent came to the premises of the petitioner and removed the fencing. This is, however, denied. In deed, as pointed out, in paragraph 4 of the counter-affidavit extracted hereinabove, it is stated that third respondent and his staff took action to stop unauthorized encroachment. This averment is not specifically denied and therefore, there is no reason to disbelieve the counter version. This Court, after perusing the counter-affidavit and giving anxious consideration to the rival contentions, is of the considered opinion that if the petitioner is in possession of Government land in addition to the land purchased by him under registered sale deed dated 23.07.1980, the remedy of third respondent is to proceed under the Andhra Pradesh Land Encroachment Act, 1905, and if the purchase made by the petitioner is in contravention of the Act, necessary action/resumption has to be initiated as per the Act. This position is also admitted. Pending such action the petitioner may not take up any construction as it would prejudice to his interests if ultimately he is evicted from the land. Therefore, while ordering *status quo* obtaining as on today, the writ petition is disposed of with the above observations. No costs.

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(**V.V.S.RAO, J**)

20th July, 2007
ghn